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IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

No. 30

GERALD D. NELSON, GERALDINE D. N. ACKER and
GERTRUDE N. FITZPATRICK, as Successor Trus-
tees under the Will of William Nelson, De-
ceased, and HELEN D. MOLLER,

Appellants,

VS.

THE CITY OF NEW YORK,

Respondent.

ON APPEAL FROM THE COURT OF APPEALS
OF THE STATE OF NEW YORK

BRIEF FOR APPELLANTS

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Opinions Below

The memorandum decision of the New York Court of Appeals denying reargument but amending the remittitur dated October 13, 1955 (R. 110) is reported in 309 N. Y. 801 and 130 N. E. 2d 602.

The *per curiam* opinion of the New York Court of Appeals affirming the order of the Appellate Division

dated July 8, 1955 (R. 108) is reported in 309 N. Y. 94, 96 and 127 N. E. 2d 827.

The memorandum decision of the Appellate Division of the New York Supreme Court (2nd Dept.) dated October 11, 1954 (R. 105) is reported in 284 App. Div. 894 (3) and 134 N. Y. S. 2d 597.

The opinion of Special Term, Part I of the New York Supreme Court for the County of Kings (R. 100) is reported in New York Law Journal, May 4, 1954, p. 11, col. 8 (not otherwise reported).

Jurisdiction

The New York Court of Appeals issued its final order on October 13, 1955. The Notice of Appeal was duly served on November 30, 1955, and filed December 1, 1955. Probable jurisdiction was noted by order dated May 14, 1956 (R. 112-114).

The jurisdiction of this Court is invoked under Title 28 U. S. C. Section 1257(2).

Constitutional and Statutory Provisions

The relevant portions of the Fourteenth Amendment to the Constitution of the United States provide:

"Section 1. * * * No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The validity of Title D of Chapter 17 of the Administrative Code of the City of New York (being Chapter 411 of the Laws of 1948 of the State of New York) is involved and it is claimed by Appellants to be repugnant to the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution as it was applied by the City of New York in taking Appellants' two properties under the circumstances presented herein. The text is quoted in full in Appendix A.

Questions Presented

1. Whether the taking by the City of New York of Appellants' two properties herein involved was, on the facts presented in the Record, a deprivation of their property without due process under the Fourteenth Amendment to the United States Constitution?
2. Whether the taking by the City of New York of Appellants' two properties herein involved was, on the facts presented in the record, a denial of equal protection of the laws under the Fourteenth Amendment to the United States Constitution?
3. Whether Chapter 17, Title D of the Administrative Code of the City of New York, being Chapter 411 of the laws of 1948 of the State of New York, is repugnant to the United States Constitution as it was applied by the City of New York in taking Appellants' two properties under the circumstances presented herein, in that such application results in a deprivation of property

without due process and denies Appellants equal protection of the laws in violation of the Fourteenth Amendment to the United States Constitution?

Statement of the Case

Because the Appellee made no denial in its opposing affidavit and offered no proof to challenge the following facts in this case, they can be deemed undisputed.

The two properties which the Appellee, the City of New York, claims are forfeit through foreclosure *in rem* are 21-17 45th Avenue, Long Island City, Queens, and 525 Powell Street, Brooklyn. They are fully described and pictured at R. 11-15, 66-69.

Appellants, successor trustees under a testamentary trust acquired fee simple title to the 45th Avenue and Powell Street properties on December 21, 1938 and October 30, 1934 respectively.

During the entire period of Appellants' ownership the two properties were carefully managed and repaired, their economic value was improved and all real estate taxes were fully paid in the case of 45th Avenue through 1951/52 second half and in the case of Powell Street through 1951/52 first half except for 1948/49 second half as to both properties. From the dates of acquisition all water charges were fully paid through the year 1944 as to both properties.

A. The Foreclosure of the 45th Avenue Property

On May 22, 1950, pursuant to Chapter 17, Title D of the Administrative Code of the City of New York, Appellee began an action *in rem* to foreclose the tax liens on Appellants' 45th Avenue property which were four years old or more.

When the action was begun only water charges on the property for 1945 and 1946 were four years old and these totaled only \$72.50. The property was then assessed for \$6,000. Title purportedly vested in the City on August 22, 1950. On February 21, 1951, the City sold Appellants' 45th Avenue property to one John Balog for \$7,000., retaining the entire proceeds.

This action was begun by filing a list of liened parcels in the County Clerk's Office in Queens. The 45th Avenue property was listed as Serial No. 83, Section 1, Block 78, Lot 9 along with 294 other parcels.

The City wrongfully continued to bill the "Estate of William Nelson" for the real estate taxes on the 45th Avenue property for two years after the City had purported to take title and for a year even after the property had been sold to John Balog.

As Appellant Gerald Nelson states in his affidavit (R. 10) the fraudulent bookkeeper presented him with these bills, and he paid them, as in the normal course of business, thus delaying his discovery of the loss of the 45th Avenue property and the bookkeeper's fraud too long to avert the foreclosure of the Powell Street property eighteen months later.

B. The Foreclosure of the Powell Street Property

On December 17, 1951, pursuant to Chapter 17, Title D of the Administrative Code of the City of New York, Appellee began an action *in rem* to foreclose the tax liens on the Powell Street property which were four years old or more.

When the action was begun only three water charges on the property were four years old and these totaled only \$814.50. The property was then assessed for \$46,000., its actual gross annual rent roll for 1951 was \$9,275.30 and the 1951 net return was \$2,589.35.

This action was begun by filing in the office of the Clerk of the County of Kings a list of 1704 affected parcels of which Appellants' Powell Street property was one designated in the action by the symbols, Serial No. 887, Section 12, Block 3831, Lot 12.

On May 19, 1952 judgment of foreclosure was entered in this action, and pursuant to said judgment a deed of even date purported to vest title in the City. The City has since been in possession, presumably collecting the \$9,275. gross annual rents.

The extraordinary circumstances beginning about 1943 through which Appellants have apparently lost their properties were discovered on November 13, 1952, when Appellants' theretofore trusted bookkeeper attempted suicide. It was found that this person, to cover up peculations, through fraud, malice or mental derangement had concealed from Appellants those water bills which were not paid, and had represented to them that all such charges were being currently paid. Appellants, deprived of actual notice of

the *in rem* actions, had no opportunity to "redeem" their properties or file answers in the actions, believing that all taxes and other charges had been fully and timely paid as in the past. The Trustees at all times when these nominal arrears accrued had a balance in their trustee bank account of some \$20,000. available to pay these small charges.

When the City applied to Appellants' properties the relatively new—1948—confiscatory *in rem* method of tax collection, the liens on Appellants' two properties barely satisfied the minimum four-year statutory requirement, and there was then available to the City the long-standing and accepted method of collecting tax liens in which the owner's equity is preserved by a required surplus sale. This method is set forth in Title A of Chapter 17 of the City Administrative Code. Also, to enforce prompt payment of water charges (usually as here insignificant in amount compared with realty taxes) the City could use the simple method of cutting off the water supply (City Administrative Code §§ 415(1)-7.0 and 415(1)-19.0).

The legitimate purpose of *in rem* foreclosure is set forth at length in the legislative history of the New York State *in rem* statute which Title D of the City Code closely parallels and upon which it was modeled (R. 43-63). Briefly stated, this purpose is stated to be to provide a method of clearing titles and restoring to the tax rolls real property hopelessly burdened with tax liens that exceed its economic value.

C. Events Since Appellants Discovered Their Loss

Upon discovering their loss in November, 1952 Appellants offered to pay with interest and penalties all charges justly due the City but to no avail. Thereupon they began a plenary action under Article 15 of the New York Real Property Law in the New York Supreme Court, Kings County, to set aside the deed to the Powell Street property and recover the surplus proceeds from the sale of the 45th Avenue property. One of the bases of that action was the repugnance to the United States Constitution of the City's actions in taking Appellants' properties under the circumstances of this case (R. 99). This point was urged in Special Term where Appellee's motion for summary judgment was granted and again in the brief and argument (R. 99) on appeal to the Appellate Division. That Court in affirming the dismissal of the plenary action preserved Appellants' right to bring motions in the foreclosure actions. Thereupon Appellants brought in Special Term the present motions in the foreclosure actions to open the *in rem* default judgments on the ground, among others, that Appellee's actions violated their rights under the Federal Constitution (R. 8). The motions were denied, the Special Term holding that Appellants were not deprived of their Constitutional rights.

ARGUMENT

I

The City of New York by foreclosure *in rem* deprived Appellants of their properties without due process of law.

(a) The abuse of the *in rem* statute in this case amounted to confiscation rather than tax collection.

When the City of New York brought its foreclosure *in rem* actions against Appellants' properties having a combined assessed valuation of \$52,000.00 the liens subject to the statute totaled only \$887.00 and they were all unpaid water charges.

The City's *in rem* statute as here pertinent, in substance provides that unless all liens are paid or an answer filed within seven weeks after commencement of the action a judgment and deed will vest title in the City absolutely and beyond dispute.

Since Title D of the New York City Code was modeled on Title 3 of Article 7-A of the New York State tax law and copies it almost verbatim, the intent of the legislature in enacting Title 3 is fairly attributable to Title D. The legislative history is contained in the "Governor's Bill Jacket, Year 1939, Chapter 692" (R. 43-64). There was no Bill Jacket for Title D.

The purpose of the *in rem* procedure is epitomized in the following language:

“* * * The improved procedure is designed to put back on the tax rolls, uninhabited lands and vacant lots.

“* * * There are in New York State alone literally a great many thousands of parcels of vacant lands and broken down improved properties which have been so long virtually abandoned by their owners that the cost of the title searches alone would exceed the value.”

To provide a proper procedure for collecting tax liens against valuable income-producing properties the legislature at the same time enacted Title 2 of Article 7-A of the New York State tax law. The purpose of this method was expressed as follows:

“In order to provide an adequate procedure for foreclosure of tax on improved lands or of current taxes upon land of higher economic value, the Committees decided to include in the bill the normal procedure of action to foreclose as to foreclose a mortgage * * * intended to be the normal method applied to valuable improved property on which liens have not been accumulated.”

Title A of Chapter 17 of the New York City Administrative Code is similar to Title 2 of the State tax law in that a public sale of the property is required in foreclosing the tax lien. All surplus realized above the tax lien accrues to the property owner. This method was available to the City when Appellants' properties were foreclosed *in rem*.

Title A and Title D were optional alternative methods to collect the tax. Title D provides:

“§ D17-2.0

“b. The provisions of this title shall not affect any existing remedy or procedure for the enforcement or foreclosure of tax liens provided for in this code or any other law, but the remedy provided herein for foreclosure by action *in rem* shall be in addition to any other remedies or procedures provided by any general, special or local law.”

Nor has Appellee ever claimed that Title A could not have been used in this case had it so chosen.

The mechanics of Title A provide for sale by the City of a “transfer of tax lien” to a third person who then acquires a lien superior to all others, bearing a high interest rate. Appellee has never seriously contended that tax liens of \$72.50 and \$814.50 secured by properties with assessed valuations of \$6,000. and \$46,000. respectively could not have been readily sold.

It is Appellants’ position that the City had a positive duty in choosing one of two optional tax collection procedures to employ that method (Title A) appropriate and normal to the case, enacted and existing as part of the City’s tax law for the protection of the property owner in such circumstances. In this case, if discretion were exercised at all, it was flagrantly abused in favor of the taxing authority.

Had the City efficiently administered its procedure for liquidating tax liens it would promptly have sold “transfers of tax liens” as provided by Title A as

the liens in question currently accrued on Appellants' properties. Had this been done there would have been no "four year old" liens to evoke *in rem* foreclosure.

The strong minority opinion in *City of Peekskill v. Perry*, 272 App. Div. 940, a 3-2 decision involving *in rem* foreclosure, expresses Appellants' contentions.

"The purpose of the tax statutes is to enforce the payment of taxes, but such statutes should not be used or perverted in their use to enable the taxing authority to speculate in real property at the expense of the property owner."

There is clear authority that an otherwise constitutional statute may be so maladministered that while lip service is done to the form, the purpose is perverted to the violation of constitutional rights.

In *Yick Wo v. Hopkins*, 118 U. S. 356, a municipal ordinance for the regulation of laundries was abused to discriminate against Chinese laundrymen.

In this case, while the minimal requirements for *in rem* foreclosure were present, the taking of Appellants' properties under the circumstances amounted to confiscation, an appropriation for public use without just compensation and without due process of law.

(b) Appellants were denied equal protection of the laws.

As long as Title A and Title D exist in the City's tax law as alternative procedures for collecting tax liens there is a fair presumption that Title A will continue to be employed in some cases and that some

property owners will thereby enjoy the protection afforded by that method. In any event in this case Appellants were arbitrarily and unequally penalized by the application of Title D by choice of a City tax official without any apparent regard for the protection of their rights provided by Title A. To this extent the action of the City through its tax officials was capricious and arbitrary and denied to Appellants the equal protection of the laws. It is inconceivable that many New York landowners are in effect forced to pay fifty or a hundred times the correct amount of their taxes, as is the plight of the Appellants.

(c) The City of New York and its tax officials knew or should have known that the pro forma statutory notice would not in fact inform Appellants of the foreclosure actions.

The following data was shown in the City's tax records indicating the peculiar tax status of Appellants' properties:

The payment in full of all real estate taxes on Powell Street from 1934 to 1951/52 (payment for the last half of '51-52 having been refused by the City) with the exception of the second half 1948-49 (R. 13).

The fact that Appellants never allocated their payments to the older—and hence more dangerous—water charge arrears as to either property, while paying current real property taxes in vastly larger amounts.

The fact that Appellants left relatively insignificant water charges unpaid on Powell Street after the 45th Avenue property had been foreclosed *in rem*.

The continued payment of real property taxes on 45th Avenue in response to bills improperly sent by the City for two years after the City took title. This should have proved to the City that the Appellants did not have notice of the first foreclosure, and would not receive similar notice of the second. Further, the City's participation through these erroneous tax bills in concealing the bookkeeper's wrongdoing might well estop the City from claiming the benefit of the second notice.

The City knew or should have known that the Appellants could not have knowingly acquiesced in sacrificing real property worth \$7,000. for \$72.50 of charges. The supposed "notice" of the first foreclosure had obviously failed of its purpose.

Lack of response from Appellants to any notices pertaining to tax arrears.

All of these facts were brought home to the City tax officials every six months when the payments of the real estate taxes were entered on the master tax sheets and again when these sheets were examined in connection with including the properties in the *in rem* lists as shown by the notations on these sheets (R. 40A, 42A).

Title D provides for notice by (1) publication (2) posting and (3) mailing. It is Appellants' position that the City knew or should have known from the foregoing facts that it was a virtual certainty that the pro-forma statutory notice would not inform the Appellants. Appellants in fact did not have notice.

Appellants urge that the minimum standard of notice sufficient to satisfy due process as laid down by this Court in *Mullane v. Central Hanover Trust Company*, 339 U. S. 306 is not satisfied in this case. In the *Mullane* case this Court said (pp. 313-315):

"Many controversies have raged about the cryptic and abstract words of the Due Process Clause but there can be no doubt that at a minimum they require that deprivation of life, liberty or property by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case. * * *

"Against this interest of the State we must balance the individual interest sought to be protected by the Fourteenth Amendment. This is defined by our holding that 'The fundamental requisite of due process of law is the opportunity to be heard.' *Grannis v. Ordean*, 234 U. S. 385, 394. This right to be heard has little reality or worth unless one is informed that the matter is pending and can choose for himself whether to appear or default, acquiesce or contest. * * *

"An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pending of the action and afford them an opportunity to present their objections. (Citing cases.) The notice must be of such nature as reasonably to convey the required information, *Grannis v. Ordean*, *supra*, and it must afford a reasonable time for those interested to make their appearance (citing cases). But if with due regard for the practicalities and peculiarities of the case these conditions are reasonably

met, the constitutional requirements are satisfied. 'The criterion is not the possibility of conceivable injury but the just and reasonable character of the requirements, having reference to the subject with which the statute deals.' (Citing cases.)

"But when notice is a person's due, process which is a mere gesture is not due process. The means employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it. The reasonableness and hence the constitutional validity of any chosen method may be defended on the ground that it is in itself reasonably certain to inform those affected (citing cases), or where conditions do not reasonably permit such notice, that the form chosen is not substantially less likely to bring home notice than other of the feasible and customary substitutes."

While the notice employed by the City in the actions pursuant to Title D might be reasonably calculated to apprise interested parties in the absence of known facts to the contrary, the extraordinary tax status of Appellants' properties known to the City rebutted any presumption that these Appellants would be informed of the actions. From the outset as to these Appellants the pro forma notice was a mere gesture.

In *Covey, Committee of Brainard v. Town of Somers*, 351 U. S. 141, decided May 7, 1956 this Court held that pro forma notice to a known incompetent for whom no representative had been appointed was not due process. In the *Covey* case property worth \$6,500 was taken for arrears of \$480. In no case, however, has there been such a disparity as that at bar.

Since the statute as interpreted by the New York courts precluded any equitable relief from such extraordinary hardship, its effect in this case was certainly to deprive the Appellants of their valuable properties without due process of law, under the pretense of collecting an insignificant tax. The injustice here far exceeds anything perpetrated under "strict foreclosure" by hard-hearted mortgagees in bygone centuries.

Conclusion

As to these appellants under the circumstances of this case the application of the *in rem* procedure violated the due process requirements of the Fourteenth Amendment. The judgment should be reversed with costs in all courts and the cause remanded to the State Court for further proceeding.

Dated: September 12, 1936.

Respectfully submitted,

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APPENDIX A

(Applicable Statute)

TITLE D, CHAPTER 17, ADMINISTRATIVE CODE OF THE CITY OF NEW YORK

FORECLOSURE BY ACTION IN REM

§ D17-1.0 DEFINITIONS.—Whenever used in this title the following terms shall mean:

1. "Tax lien." Any unpaid tax, assessment or water rent and interest or penalty thereon, which is a lien on real property whether or not the same be evidenced by a transfer of tax lien or any other written instrument.
2. "Court." The supreme court.

§ D17-2.0 APPLICABILITY OF PROCEDURE OF FORECLOSURE IN REM.—a. The provisions of this title shall be applicable only to tax liens owned by the city.

b. The provisions of this title shall not affect any existing remedy or procedure for the enforcement or foreclosure of tax liens provided for in this code or any other law, but the remedy provided herein for foreclosure by action in rem shall be in addition to any other remedies or procedures provided by any general, special or local law.

c. The provisions of this title shall not affect pending actions or proceedings, provided, however, that any pending action or proceeding for the enforcement or foreclosure of tax liens may be discontinued, and a new action may be instituted pursuant to the provisions of this title, in respect to any such tax lien.

§ D17-3.0 JURISDICTION.—The supreme court shall have jurisdiction of actions authorized by this title.

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§ D17-4.0 FORECLOSURE BY ACTION IN REM.—Whenever it shall appear that a tax lien which has been due and unpaid for a period of at least four years from the date on which the tax, assessment or other legal charge represented thereby became a lien, such tax lien, except as otherwise provided by this title, may be summarily foreclosed in the manner provided in this title, notwithstanding the provisions of any general, special or local law and notwithstanding any omission to hold a tax sale prior to such foreclosure. Ownership of a transfer of tax lien or of a tax sale certificate or of any other instrument evidencing such tax lien by the city shall be evidence of the fact that the tax, assessment or other legal charge represented thereby have not been paid to the city or assigned by it.

§ D17-5.0 FILING OF LIST OF DELINQUENT TAXES.—The city treasurer shall file in the office of the clerk of the county in which the property subject to such tax liens is situated, a list of parcels of property in such county affected by unpaid tax liens held and owned by the city which on the date of filing shall have been unpaid for a period of at least four years or more after the date when the tax, assessment or other legal charge represented thereby became a lien and the city treasurer shall from time to time thereafter continue to file additional lists of parcels of property affected by unpaid tax liens held and owned by the city which on the respective dates of filing shall have been unpaid for a period of at least four years or more after the date when the tax, assessment or other legal charge represented thereby became a lien. Each such list shall compromise all such parcels within a particular section or ward designated on the tax maps of the city, except those parcels excluded from such lists as hereinafter provided. Before filing any list of parcels of property, the city treasurer with the approval of the

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board of estimate, may exclude particular parcels therefrom. The city treasurer when requesting approval of the exclusion of any particular parcel shall state the reasons therefor in writing. No parcel shall be excluded from any such list for any reason other than the following: (1) that a meritorious question has been raised by a person having an interest in such parcel as to the validity of the tax lien affecting such parcel, or (2) that the city treasurer before the effective date hereof had agreed to accept payment of delinquent taxes, assessments or other legal charges in instalments of at least two years of such arrears with each year of current taxes, assessments or other legal charges and that there has been no default in such agreement, or (3) that an agreement has been duly made and executed and filed with the city treasurer for the payment of such delinquent taxes, assessments or other legal charges in instalments, the first of which shall be in an amount equal to at least twenty-five per centum of such arrears payable upon the date of making and filing with the city treasurer of the instalment agreement, and the balance of which shall be in amounts equal to at least two years of such arrears and payable with each year of current taxes, assessments or other legal charges and that there has been no default in such agreement, or (4) that within two years last past the city treasurer had sold or the city had assigned a tax lien owned and held by the city to a person who had not completed all of the proceedings necessary to enforce such tax lien. The city treasurer shall transmit a list of all parcels within the particular section or ward selected which are affected by tax liens which shall have been unpaid for a period of at least four years and an additional list which shall designate the parcels on the first list which should be excluded. The board of estimate upon receipt of such lists shall cause them to be published in the City Record. The list covering the parcels to be excluded shall set forth

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as to each such parcel, the reason for exclusion. Such publication shall also contain a general description of the boundaries of the section or ward affected, but need not contain measurements or directions. Such list of all parcels and such additional list designating the parcels to be excluded from the first list shall not be approved at the meeting of the board of estimate at which they appear on the calendar for the first time, nor shall such board approve the exclusion of any parcel at any succeeding meeting unless one week has elapsed after the meeting when such exclusion was first submitted for approval. The approval of such exclusion by the board of estimate shall be by resolution recorded in its minutes, stating the reason therefor. All parcels included in any list shall be numbered serially. The city treasurer shall file a copy of each such list, certified by the county clerk, in his main office and in each branch office and in the office of the corporation counsel. Such lists shall be known and designated as the "List of Delinquent Taxes" and shall bear the following caption: "Supreme Court, County. In the matter of foreclosure of tax liens pursuant to title D of chapter seventeen of the administrative code of the city of New York. List of delinquent taxes." Where the list comprises parcels in a particular section or ward the caption shall also refer to such section or ward.

The inadvertent failure of the city treasurer to include all parcels in such list, or where more than one list is filed, all such parcels in the list for the designated section or ward shall not affect the validity of any proceeding brought hereunder. Each such list shall also contain as to each parcel, the following:

(a) A brief description sufficient to identify each parcel affected by such tax lien. A description by stating the lot, block and section or ward number, street and street number, if there be such, or other identification

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numbers of any parcel upon a tax map, or a lot number or other identification number of any tract, the map of which is filed in the county clerk's or register's office, shall be a sufficient description. An omission or error in the designation of a street or street number shall not affect the validity of any proceeding brought hereunder, either as to such parcel or any other parcels.

(b) The name of the last known owner of such parcel as the same appears on the assessment roll for the year preceding the calendar year in which such list is filed.

(c) A statement of the amount of each tax lien upon such parcel including those which shall have been due and unpaid for less than four years together with the date or dates from which and the rate and rates at which interest and penalties shall be computed.

Such list of delinquent taxes shall be verified by the affidavit of the city treasurer. The filing of such list of delinquent taxes in the office of the clerk of the county in which the property subject to such tax liens is situated shall constitute and have the same force and effect as the filing and recording in said office of an individual and separate notice of pendency of action and as the filing in the supreme court in such county of an individual and separate complaint by the city against the real property therein described, to enforce the payment of the delinquent taxes, assessments or other lawful charges which have accumulated and become liens against such property.

Each county clerk with whom such list of delinquent taxes is filed shall index it in a separate book kept for that purpose which shall constitute due filing, recording and indexing of such notice in lieu of any other requirement under section one hundred twenty-two of the civil practice act or otherwise.

§ D17-6.0 PUBLIC NOTICE OF FORECLOSURE.—Upon the filing of such list in the office of the county clerk, the city treas-

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uror forthwith shall cause a notice of foreclosure to be published at least once a week for six successive weeks in the City Record and in two newspapers designated by the city treasurer and published within the county in which the property affected by such list is located, except that in the county of Richmond one of the newspapers designated may be published in the county of New York or in the county of Kings. In New York and Bronx counties the newspapers to be designated for the publication of such notice or any other public notice required pursuant to this article shall be the daily law journal designated by the justices of the appellate division of the first judicial department and another newspaper designated by said justices pursuant to the provisions of subdivisions one and two of section ninety-seven of the judiciary law. Such notice shall be in substantially the following form: "Supreme Court, County.

**NOTICE OF FORECLOSURE OF TAX LIENS
BY THE CITY OF NEW YORK IN THE BOR-
OUGH OF** (here insert name of
Borough, and section or ward number and general
description giving boundaries of section or ward.
Such description need not contain measurements or
directions.)

BY ACTION IN REM

Please take notice that on the....day of.....
the Treasurer of the City of New York, pursuant to law,
filed with the Clerk of.....County, a list of
parcels of property affected by unpaid tax liens, held and
owned by said City of New York which on the....day
of....., had been unpaid for a period of at
least four years after the date when the tax, assessment,
or other legal charge became a lien. Said list contains
as to each such parcel, (a) a brief description of the prop-
erty affected by such tax lien, (b) the name^a of the last

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known owner of such property as the same appears on the assessment roll for the last calendar year or a statement that the owner is unknown if such be the case, (c) a statement of the amount of such tax lien upon such parcel, including those which shall have been due and unpaid for less than four years together with the date or dates from which, and the rate or rates at which interest and penalties thereon shall be computed.

All persons having or claiming to have an interest in the real property described in such list of delinquent taxes are hereby notified that the filing of such list of delinquent taxes constitutes the commencement by the city of New York of an action in the Supreme Court, County to foreclose the tax liens therein described by a foreclosure proceeding in rem and that such list constitutes a notice of pendency of action and a complaint by the City of New York against each piece or parcel of land therein described to enforce the payment of such tax liens. Such action is brought against the real property only and is to foreclose the tax liens described in such list.

No personal judgment shall be entered herein for such taxes, assessments or other legal charges or any part thereof.

This notice is directed to all persons having or claiming to have an interest in the real property described in such list of delinquent taxes and such persons are hereby notified further that a certified copy of such list of delinquent taxes has been filed in the main office of the city treasurer in the Borough of Manhattan and in the office of the city treasurer at, in the Borough of, and will remain open for public inspection up to and including the ... day of (here insert a date at least seven weeks from the date of the first publication of this notice,) which date is hereby fixed as the last date for redemption.

And take further notice that any person having or

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claiming to have an interest in any such parcel and the legal right thereto may on or before said date redeem the same by paying to the city treasurer the amount of all such unpaid tax liens thereon and in addition thereto all interest and penalties which are a lien against such real property computed to and including the date of redemption. In the event that such taxes are paid by a person other than the record owner of such property, the person so paying shall be entitled to have the tax liens affected thereby satisfied of record or to receive an assignment of such tax liens evidenced by a proper written instrument.

Every person having any right, title or interest in or lien upon any parcel described in such list of delinquent taxes may serve a duly verified answer upon the corporation counsel setting forth in detail the nature and amount of his interest or lien and any defense or objection to the foreclosure. Such answer must be filed in the office of the county clerk in the county in which such real property is located and served upon the corporation counsel at any time after the first date of publication but not later than twenty days after the date above mentioned as the last day for redemption. In the event of failure to redeem or answer by any person having the right to redeem or answer, such person shall be forever barred and foreclosed of all his right, title and interest and equity of redemption in and to the parcel described in such list of delinquent taxes and a judgment in foreclosure may be taken by default.

.....
Treasurer

.....
Corporation Counsel
Office and Post Office Address

.....
Borough of Manhattan
City of New York"

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On or before the date of the first publication of the notice above set forth, the treasurer shall cause a copy of such notice to be mailed to the last known address of each owner of property affected thereby, as the same appears upon the records in the office of the city treasurer, and in the event that the name or address of such owner does not appear in such records the city treasurer shall so state in an affidavit which shall be filed in the office of the county clerk and the treasurer shall cause a copy of such notice to be posted in the office of the treasurer, in the county court house of the county in which the property subject to such tax lien is situated and three other conspicuous places in the borough in which the affected properties are located. The treasurer shall cause to be inserted with or attached to such notice a statement substantially as follows: "To the party to whom the enclosed notice is addressed: You are the presumptive owner or lienor of one or more of the parcels mentioned and described in the list referred to in the enclosed notice.

Unless the taxes and assessments and all other legal charges are paid, or an answer interposed, as provided by statute, the ownership of said property will in due course pass to the city of New York as provided by the Administrative Code of the City of New York.

Dated

.....
Treasurer"

§ D17-7.0 NOTICE TO MORTGAGEE OR LIENOR.—Any owner of real property, any mortgagee thereof, or any person having a lien or claim thereon, or interest therein may file with the city treasurer a notice stating his name, residence and post office address and a description of the parcel in which such person has an interest, which notice shall continue in effect for the purposes of this section

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for a period of ten years, unless earlier canceled by such person. The city treasurer shall mail to each such person forthwith after the completion and filing of the list of delinquent taxes as herein provided, a copy of each notice required under this title and affecting such parcel. The failure of the city treasurer to mail such notice as herein provided shall not affect the validity of any proceeding brought pursuant to this title.

§ D17-8.0 FILING OF AFFIDAVITS.—All affidavits of filing, publication, posting, mailing or other acts required by this title shall be made by the person or persons performing such acts and shall be filed in the office of the county clerk of the county in which the property subject to such tax lien is situated and shall together with all other documents required by this title to be filed in the office of such county clerk, constitute and become a part of the judgment roll in such foreclosure action.

§ D17-9.0 TRIAL OF ISSUES.—If a duly verified answer is served upon the corporation counsel within the period mentioned in the notice published pursuant to section D17-6.0 the court shall summarily hear and determine the issues raised by the complaint and answer in the same manner and under the same rules as it hears and determines other actions, except as in this title otherwise provided. Upon such trial, proof that such tax was paid, together with any interest or penalty which may have been due, or that the property was not subject to tax shall constitute a complete defense. Whenever an answer is interposed as herein provided, the defendant shall have an absolute right to the severance of the action as to any parcel or parcels of land in which he has an interest, upon written demand therefor filed with or made a part of his answer.

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§ D17-10.0 PREFERENCE OVER OTHER ACTIONS.—Any action brought pursuant to this title shall be given preference over all other causes and actions, and no such action shall be referred except to an official referee and the supreme court is hereby given jurisdiction to make such reference.

§ D17-11.0 PRESUMPTION OF VALIDITY.—It shall not be necessary for the city to plead or prove the various steps, procedures and notices for the assessment and levy of the taxes, assessments or other lawful charges against the lands set forth in the list of delinquent taxes and all such taxes, assessments or other lawful charges and the lien thereof shall be presumed to be valid. A defendant alleging any jurisdictional defect or invalidity in the tax or in the sale thereof must particularly specify in his answer such jurisdictional defect or invalidity and must affirmatively establish such defense. The provisions of this title shall apply to and be valid and effective with respect to all defendants even though one or more of them be infants, incompetents, absentees or non-residents of the state of New York.

§ D17-12.0 FINAL JUDGMENT.—a. The court shall have full power to determine and enforce in all respects the priorities, rights, claims and demands of the several parties to said action, as the same shall exist according to law, including the priorities, rights, claims and demands of the defendants as between themselves, and in a proper case to direct a sale of such lands and the distribution or other disposition of the proceeds of the sale. The court shall further determine upon proof and shall make finding upon such proof whether there has been due compliance by the city with the provisions of this title.

b. Any sale directed by the court shall be at public auction by the city treasurer. Public notice thereof shall

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be given by publication in the manner provided in section nine hundred eighty-six of the civil practice act. The city treasurer shall receive no fee or compensation for such service. The description of the parcel offered for sale in such notice shall be that contained in the list of delinquent taxes with such other description, if any, as the court may direct.

c. In directing any conveyance pursuant to this title, the judgment shall direct the city treasurer to prepare and execute a deed conveying title to the parcel or parcels concerned. Said title shall be full and complete. Upon the execution of such deed the grantee shall be seized of an estate in fee simple absolute in such parcel unless expressly made subject to tax liens accrued or accruing subsequent to those contained in the list of delinquent taxes, and all persons, including the state of New York, infants, incompetents, absentees and non-residents, except the city, who may have had any right, title, interest, claim, lien or equity of redemption in or upon such parcel, shall be barred and forever foreclosed of all such right, title, interest, claim, lien or equity of redemption.

d. The court shall make a final judgment awarding to the city the possession of any parcel described in the list of delinquent taxes not redeemed as provided in this title and as to which no answer is interposed as provided herein. In addition thereto such judgment shall contain a direction to the city treasurer to prepare, execute and cause to be recorded a deed conveying to the city full and complete title to such lands subject only to tax liens accrued or accruing subsequent to those contained in the list of delinquent taxes. Upon the execution of such deed, the city shall be seized of an estate in fee simple absolute in such land and all persons, including the state of New York, infants, incompetents, absentees and non-residents who may have had any right, title, interest, claim, lien or

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equity of redemption in or upon such lands shall be barred and forever foreclosed of all such right, title, interest, claim, lien or equity of redemption.

§ D17-13.0 WITHDRAWAL OF PARCELS FROM FORECLOSURE.—

The city treasurer may at any time prior to final judgment withdraw any parcel from a proceeding under this title with the approval by resolution of the board of estimate stating the reason therefor. No parcel shall be withdrawn from such proceeding except for one of the reasons set forth in section D17-5.0 of this title as a reason for exclusion of a parcel from a list of delinquent taxes to be filed. Upon such withdrawal the tax liens on any parcel so withdrawn shall be and remain the same as if no action had been instituted and the city treasurer shall issue a certificate of withdrawal which shall be filed with the county clerk who shall note the word "withdrawn" and the date of such filing opposite the description of such parcel on the list. Such certificate may include one or more parcels appearing on any list. Such notice shall operate to cancel the notice of pendency of action with respect to any such parcel.

§ D17-14.0 RIGHT OF REDEMPTION NOT DIMINISHED.—The period of time in which any owner of, or other person having an interest in a parcel of property may redeem from a sale of a transfer of tax lien is not hereby diminished nor shall such period of time be diminished by the commencement of any action brought pursuant to this title.

§ D17-15.0 PRIORITY OF LIENS.—Tax liens shall rank in priority as may now, or as may hereafter, be provided by law.

§ D17-16.0 MAILING TAX BILLS.—It shall be the duty of the city treasurer, upon receipt of the assessment roll and

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warrant to prepare, complete, mail or otherwise deliver tax bills to the owners of property assessed so far as such owners and their addresses are known. But the failure of the city treasurer to mail such tax bills shall not invalidate or otherwise affect such tax nor prevent the accruing of any interest or penalty imposed for the non-payment thereof, nor prevent or stay proceedings under this title, nor effect the title of the plaintiff or purchaser under such proceedings.

§ D17-17.0 REGISTERING OWNER, MORTGAGEE, ET CETERA.—

The owner of property liable to assessment, a mortgagee thereof, or a person having a lien or claim thereon, may file with the city treasurer a notice stating his name and post-office address, a description of the premises by reference to section or ward, block and lot numbers on the tax map, which notice shall continue in effect for the purposes of this section for the period of ten years, unless earlier cancelled by such person. Service of notice or process shall be made upon such persons who have filed a notice in respect to such premises. Such service may be made personally or by mail to the address designated in said notice. The failure to receive such notice as herein provided shall not effect the validity of any action or proceeding brought pursuant to this title.

§ D17-18.0 WRIT OF ASSISTANCE.—The city, after acquiring title to premises under and pursuant to the terms and provisions of this title, shall be entitled to a writ of assistance, with the same force and effect as if the city had acquired the property by virtue of a mortgage foreclosure.

§ D17-19.0 CONSOLIDATION OF ACTIONS.—Actions or proceedings pending in the courts, or otherwise, to cancel a sale of a tax lien on lands a lien upon which is being

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foreclosed by action under this title, shall be terminated upon the institution of a foreclosure action pursuant to this title, and the rights and remedies of the parties in interest to such pending actions or proceedings shall be determined by the court in such foreclosure action.

§ D17-20.0 LANDS HELD FOR PUBLIC USE; RIGHT OF SALE.—Whenever the city shall become vested with the title to lands by virtue of a foreclosure proceeding brought pursuant to the provisions of this title, such lands shall, unless actually used for other than municipal purposes, be deemed to be held by the city for a public use but for a period of not more than three years from the date of the final judgment. The city is hereby authorized to sell and convey such lands in the manner provided by law for the sale and conveyance of other real property held and owned by the city and not otherwise.

§ D17-21.0 CERTIFICATE OF SALE AS EVIDENCE.—The transfer of tax lien or any other written instrument representing a tax lien shall be presumptive evidence in all courts in all proceedings under this title by and against the purchaser and his representatives, heirs and assigns, of the truth of the statements therein, of the title of the purchaser to the property therein described, and of the regularity and validity of all proceedings had in reference to the taxes, assessments or other legal charges for the non-payment of which the tax lien was sold and the sale thereof. After two years from the issuance of such certificate or other written instrument, no evidence shall be admissible in any court in a proceeding under this title to rebut such presumption unless the holder thereof shall have procured such transfer of tax lien or such other written instrument by fraud or had previous knowledge that it was fraudulently made or procured.

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§ D17-22.0 DEED IN LIEU OF FORECLOSURE.—The city may when authorized by resolution of the board of estimate and in lieu of prosecuting an action to foreclose a tax lien on any parcel pursuant to this title accept a conveyance of the interest of any person having any right, title, interest, claim, lien or equity of redemption in or to such parcel.

§ D17-23.0 SEVERABILITY OF PROVISION.—The powers granted and the duties imposed by this title and the applicability thereof to any persons, the city or circumstances shall be construed to be independent and severable and if any one or more sections, clauses, sentences or parts of this title or the applicability thereof to any persons, the city or circumstances shall be adjudged unconstitutional or invalid, such judgment shall not affect, impair or invalidate the remaining provisions thereof or the applicability thereof to other persons or circumstances, but shall be confined in its operation to the specific provisions so held unconstitutional and invalid and to the persons and circumstances affected thereby.

§ D17-24.0 SALES AND FORECLOSURES OF TAX LIENS.—Notwithstanding any of the provisions of this title the city may continue to sell tax liens, transfer the same to purchasers and become the purchaser at such sales of tax liens in the manner provided by this chapter.

§ 2. This act shall take effect on the first day of July, nineteen hundred forty-eight.